

FILED
DISTRICT COURT OF GUAM
SEP 19 2006
MARY L.M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARWAN SHIPPING & TRADING, FIVE
SEAS SHIPPING CO., LLC AND S.J.
GARGRAVE SYNDICATE 2724, *in personam*,

Defendants.

Civil Case No. 06-00011

**ORDER RE MOTION TO SET
ASIDE ORDER GRANTING
MOTION TO INTERVENE**

This case is before the Court on the Defendants', Marwan Shipping & Trading and Five Seas Shipping Co., Motion to Set Aside Order Granting Motion to Intervene. Pursuant to Local Civil Rule 7.1(e)(3), this matter is appropriate for decision without the need for oral argument.¹ After reviewing the parties' submissions, as well as relevant caselaw and authority, the Court **DENIES** the motion and issues the following decision.

BACKGROUND

On July 18, 2006, Inchcape Shipping Services Guam LLC ("Inchcape") filed a motion to intervene. Thereafter, counsel for Defendant Marwan Shipping & Trading ("Marwan") and

¹Local Civ.R. 7.1(e)(3) states "[i]n cases where the parties have requested oral argument, such oral argument may be taken off calendar by Order of the Court, in the discretion of the Court, and a decision rendered on the basis of the written materials on file."

ORIGINAL

1 Defendant Five Seas Shipping Co., LLC ("Five Seas") requested Inchcape's counsel's consent to
2 extend the time in which to respond to the motion to intervene "by two weeks," until August 15,
3 2006. (Ledger Decl. ¶ 5.) Inchcape's counsel agreed to the request. *Id.* at ¶ 6. No action was taken
4 by any of the parties to request the permission of the Court for such an extension.

5 Finding that no timely opposition had been filed, the Court granted the motion on August
6 4, 2006. *See* Docket No. 31. On August 15, 2006, Marwan and Five Seas filed the instant motion
7 to set aside that Order.

8 DISCUSSION

9 The Defendants now move the Court pursuant to Fed. R. Civ. P. 60(b) to set aside its
10 August 4, 2006 order granting Inchcape's motion to intervene. Rule 60(b)(1) provides that a court
11 may relieve a party from a final judgment on the basis of excusable neglect. "[T]he determination
12 of whether neglect is excusable is an equitable one that depends on at least four factors: (1) the
13 danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the
14 proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Pioneer*
15 *Inv. Servs. Co. v. Brunswick Assoc. Limited Partnership*, 507 U.S. 380, 395 (1993).

16 Here, the Defendants claim that they had secured an extension of time within which to file
17 an opposition to the motion to intervene up to and including August 15, 2006. Therefore, the Court
18 should set aside its order permitting intervention by Inchcape in order to given them an opportunity
19 to file an opposition. However, the Defendants fail to discuss how an agreement with opposing
20 counsel for an extension of time to file an opposition supports a finding of "excusable neglect"
21 under Rule 60(b). The Defendants do not discuss whether they missed the deadline because of
22 inadvertence, miscalculation or negligence. *Pioneer*, 507 U.S. 380, 395 (1993). Local Rule 7.1
23 (d)(2) requires oppositions to be filed fourteen (14) days from the date of the filing of the motion.
24 The deadline to file an opposition to the motion to intervene was August 1, 2006. It is clear that
25 counsel was aware of the deadline.

26 While the Defendants may have secured the consent of opposing counsel to extend the date
27 to file an opposition, this Court was not made aware of any such agreement or stipulation. Local
28 Rule 7.1 (f) forewarns counsel that should parties forego their right to file required papers, they run

1 the risk of the court granting or denying the motion. The rule specifically provides:

2 **Failure to File Required Papers.** Papers not timely filed by a party including any
3 memoranda or other papers required to be filed under this Rule will not be
4 considered and such tardiness may be deemed by the Court as consent to the
5 granting or denial of the motion, as the case may be.

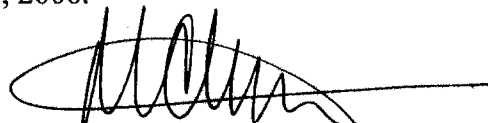
6 Local Civ. R. 7.1(f).

7 Moreover, Defendants failed to seek Court approval for an extension of time in this
8 instance, contrary to the local rules. General Rule 3.1(a) states that “[s]tipulations will be
9 recognized as binding only when made in open court or filed in the cause of action. Written
10 stipulations shall not be effective unless approved by the Judge.” GR 3.1(c). The misreading of
11 the Local Rules by counsel does not constitute excusable neglect warranting relief under Rule
12 60(b)(1). *Speiser, Krause, & Madpole P.C. v. Ortiz*, 271 F.3d 884, 886-887 (9th Cir.2001); see
13 *Engleson v. Burlington Northern R. Co.*, 972 F.2d 1038, 1043 (9th Cir.1992) (“[n]either ignorance
14 nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule
15 60(b)(1).”) (citation omitted). Accordingly, this Court does not find that the Defendants have made
16 any kind of showing justifying the relief they seek.

17 CONCLUSION

18 Upon consideration of the foregoing, the Court finds that the Defendants have failed to set
19 forth a basis to grant the relief sought. Therefore, the Defendants’ motion is **DENIED**.

20 **SO ORDERED** this 19th day of September, 2006.

21 
22 **MORRISON C. ENGLAND, JR.**
23 United States District Judge

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27 _____
28 *The Honorable Morrison C. England, Jr., United States District Judge for the Eastern
District of California, by designation.